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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/713,119

11/17/2003

Takahiro Suzuki

008312-0306845

9774

909 7590 01/09/2007  
PILLSBURY WINTHROP SHAW PITTMAN, LLP  
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EXAMINER

NGUYEN, LINH THI

ART UNIT

PAPER NUMBER

2627

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/713,119	<b>Applicant(s)</b> SUZUKI, TAKAHIRO	
	<b>Examiner</b> Linh T. Nguyen	<b>Art Unit</b> 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,5,9-11 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,9-11 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5, 9, 10, 11 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Takahashi (US Publication number 20020150010).

In regards to claims 1, 9 and 11, Takahashi discloses a disk apparatus, method and medium comprising: a defect detection unit configured to detect a defect of a disk; a setting unit configured to set an actual recording area, where information can actually be recorded, of all recording areas of the disk based on a defect detection result by the defect detection unit (Fig. 11, element 207); and a recording unit configured to record user information in the actual recording area set by the setting unit (Fig. 11, element 205), wherein the defect detection unit detects a first defect (secondary defect), which changes for every radial distance (Paragraph [0077]), for each predetermined area corresponding to a radial distance (16 sectors in a unit) and detects a second defect common to the entire disk (primary defect; Paragraph [0065]), and wherein the setting unit obtains recording performance for each predetermined area based on the defect detection result by the defect detection unit (Paragraph [0068]), and sets an area inside

an innermost one of areas that do not satisfy a predetermined recording performance level in all the recording areas of the disk as the actual recording area where information can actually be recorded (Fig. 7, spare area are set for only to record defect data).

In regards to claims 5, 10, and 15, Takahashi discloses an apparatus, method and medium, wherein when the user information has already been recorded in an area other than the actual recording area of all the recording areas of the disk, the setting unit sets the disk as an unrecordable erasable disk (overwrite; Paragraph [0098]) and when the user information has not been recorded in the area other than the actual recording area of all the recording areas of the disk, the setting unit sets the disk as a recordable disk (Paragraph [0009]; If the disk has not been be recorded it automatically will record at the area that has not been written).

### ***Response to Arguments***

Applicant's arguments, see page 7, lines 19-29, filed 10/23/06, with respect to the rejection(s) of claim(s) 5, 9, 10, and 15 under USC 112, first paragraph, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Takahashi.

### ***Conclusion***

Art Unit: 2627

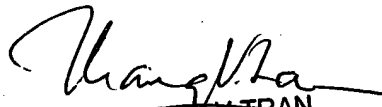
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh T. Nguyen whose telephone number is 571-272-5513. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on 571-272-4483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LN

December 29, 2006

  
THANH V. TRAN  
PRIMARY EXAMINER

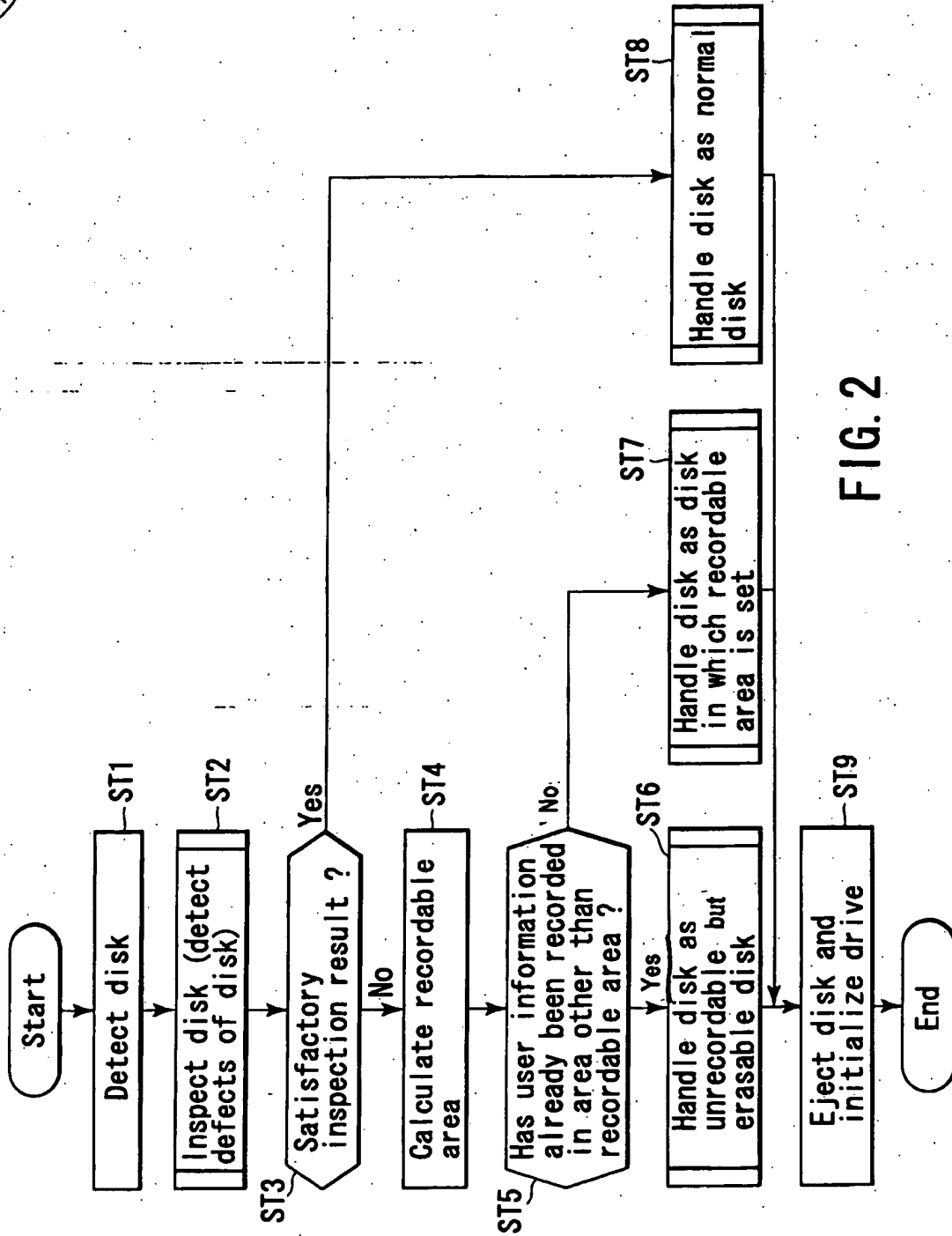


FIG. 2